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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY RM DEPUTY

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5 Attorneys for Plaintiff,
 6 MICHAEL MANN doing business as MM BIZ

7 UNITED STATES DISTRICT COURT
 8
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 MICHAEL MANN doing business as MM BIZ,

07 CV 0083

BEN CAB

11 Plaintiff,

12 v.

13 AFN INVESTMENTS, LTD. an unknown entity,

14 Defendants.
 15

) VERIFIED COMPLAINT FOR:
) DECLARATORY RELIEF (28 USC §
) 2201; 15 USC § 1114(2)(d)(v))
)
)
)
)
)
)

BY FAX

17 Plaintiff, MICHAEL MANN doing business as MM BIZ (collectively "MM"), for causes
 18 of action against Defendant, AFN INVESTMENTS, LTD. an unknown entity, alleges as follows:

19 1. Plaintiff, MICHAEL MANN is, and at all times mentioned herein was, an
 20 individual, residing in the City of Bethesda, County of Montgomery, State of Maryland, and
 21 doing business as MM BIZ (collectively "MM" or "Plaintiff").

22 2. Plaintiff is informed and believes, and thereon alleges, that Defendant, AFN
 23 INVESTMENTS, LTD. ("AFN"), is, and at all times mentioned herein, was, an unknown entity,
 24 with its principal place of business in the City of Belton, County of Bell, State of Texas.

25 3. Plaintiff is informed and believes, and thereon alleges, that TIERRANET, INC., is
 26 a California corporation, with its principal place of business in the City of Poway, County of San
 27
 28

1 Diego, State of California, and doing business as DOMAIN DISCOVER and
2 DOMAINDISCOVER ("DOMAIN DISCOVER").

3 4. Jurisdiction and venue are proper in this Court. Specifically, DOMAIN
4 DISCOVER's principal place of business is in Poway, California, in the County of San Diego,
5 within this Court's jurisdiction. Moreover, Defendant, AFN, stipulated in a previous proceeding,
6 described below, pursuant to the Internet Corporation for Assigned Names and Numbers'
7 ("ICANN") Uniform Domain-Name Dispute-Resolution Policy ("UDRP"), that jurisdiction was
8 proper in this Court, the judicial district in which DOMAIN DISCOVER is located. Paragraphs
9 1, 3(b)(xiii), and other provisions of ICANN's Rules for Uniform Domain Name Dispute
10 Resolution Policy also provide for jurisdiction and venue in this Court.
11

12 5. Jurisdiction is also proper in this Court on an *in personam* basis pursuant to the
13 Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d), and pursuant to other federal
14 statutes, regulations, and case law.
15

16 **FIRST CAUSE OF ACTION**
17 **(Declaratory Relief)**
18 **((28 USC § 2201; 15 USC § 1114(2)(d)(v))**
19 **(Against Defendant, AFN)**

20 6. Plaintiff refers to the allegations contained in Paragraphs 1 through 5 inclusive,
21 and incorporates those allegations herein as though fully set forth.

22 7. Plaintiff is a reputable business man who founded one of the world's largest
23 companies providing direct navigation services, the delivery of targeted results on the World
24 Wide Web of the Internet, as well as domain name registration, domain name transfer, web
25 hosting services, and the buying and selling of generic and descriptive domain names,
26 BuyDomains.com. Plaintiff sold a controlling interest in said company in February 2005.

27 8. Plaintiff, directly and indirectly through companies in which he invests, routinely
28 creates websites and portals for valid business reasons.

1 9. Plaintiff never registers or offers for sale any domain names which he reasonably
2 believes would infringe the rights of any trademark holder. Instead, Plaintiff and his companies
3 solely invests in and sells domain names which, to the best of their knowledge and belief, they
4 reasonably believe they are legally entitled to acquire and sell. In many cases, the domain names
5 are either: (1) generic, i.e., can never be subject to any trademark claims because they only name
6 the goods or services being provided; or (2) merely descriptive, i.e. are not subject to any
7 trademark claims because they merely describe an attribute of the goods or services provided. It
8 is basic hornbook law that neither generic or merely descriptive names are entitled to any
9 trademark protection.
10

11 10. In addition to being a successful businessman, Plaintiff is a philanthropist. Plaintiff
12 has registered hundreds of domain names solely for non-profit, public interest purposes, and
13 which Plaintiff has given or leased to third parties at no cost whatsoever for their public interest
14 usage.
15

16 11. On or about July 29, 2005, Plaintiff acquired the domain name
17 <LABORFORCE.COM> (the "Domain Name") . Plaintiff acquired the Domain Name to
18 develop into a business.
19

20 12. At the time that Plaintiff acquired the Domain Name, Plaintiff had no actual
21 knowledge that any entity claimed trademark rights in the mark LABOR FORCE.

22 13. Indeed, the term "LABOR FORCE" is a generic or descriptive term. There are
23 millions of references on the World Wide Web of the Internet to the phrase "LABOR FORCE",
24 as shown through a search with the Google search engine. The term "Labor Force" is found in
25 the dictionary, is used by federal and state governmental entities, and is understood by the public
26 to mean the total number of employed or employable persons.
27

28 14. At least one third party, Laborsoft Corporation, owns a trademark for the mark

1 LABOR FORCE.

2 15. Plaintiff is informed and believes, and thereon alleges, that even if the term
3 LABOR FORCE was not generic or merely descriptive when Defendant, AFN, applied for
4 trademark registrations of that name, the term LABOR FORCE has since become generic or
5 merely descriptive, and has thus lost any trademark rights which it ever had, if any.
6

7 16. Plaintiff is further informed and believes, and thereon alleges, that Defendant,
8 AFN, has abandoned any trademark rights which it had, if any.

9 17. For all of the above-described reasons, and as will be demonstrated at trial,
10 Plaintiff registered the Domain Name in good faith.

11 18. Moreover, because Plaintiff desires to develop the Domain Name into a viable
12 Internet and/or e-mail related business, and because domain names are a valuable property right
13 that may only be taken away if a trademark user has exclusive rights to a protectable mark in the
14 same class of goods or services, and given that the phrase LABOR FORCE is generic, merely
15 descriptive, or not subject to exclusive ownership and enforcement by Defendant, AFN, Plaintiff
16 has legitimate rights and/or legitimate interests in respect to the Domain Name.
17

18 19. In or about December 2006, the National Arbitration Forum (the "NAF") rendered
19 a decision in a UDRP proceeding brought by Defendant, AFN, against Plaintiff, entitled *AFN*
20 *Investments, Ltd. v. MM Biz*, being NAF Claim Number FA0610000819167. In its decision,
21 NAF ruled that Plaintiff must transfer the Domain Name to Defendant, AFN. Plaintiff believes
22 that NAF's decision was incorrect and that he can prove the same.
23

24 20. Indeed, if NAF's decision were correct, then no honest business could invest in or
25 sell any generic or descriptive domain name for fear that someone claiming a trademark in some
26 niche market would end up obtaining such domain name at no cost. This result is absurd. The
27 secondary market for domain names is a multi-million dollar industry. Under AFN's
28

1 interpretation of the law and facts, that market would be destroyed.

2 21. 28 U.S.C. § 2201 provides a basis for declaratory relief in the instant action.

3 22. In addition, declaratory relief is proper under 15 U.S.C. §
4 1114(2)(d)(v), which provides:

5
6 A domain name registrant whose domain name has been
7 suspended, disabled, or transferred under a policy described
8 under clause (ii)(II) may, upon notice to the mark owner,
9 file a civil action to establish that the registration or use of
10 the domain name by such registrant is not unlawful under
11 this chapter. The court may grant injunctive relief to the
12 domain name registrant, including the reactivation of the
13 domain name or transfer of the domain name to the domain
14 name registrant.

15 23. An actual controversy has arisen and now exists between Plaintiff and Defendants
16 concerning their respective rights and duties in the Domain Name. Plaintiff contends as follows:
17 that Plaintiff is the rightful owner of the Domain Name and is entitled to its sole use and
18 possession. Defendant, AFN, contends that it is entitled to the Domain Name. DOMAIN
19 DISCOVER is the registrar for the Domain Name, and is awaiting an order of this Court to
20 instruct it on whether the Domain Name should remain with Plaintiff or should be transferred to
21 Defendant, AFN.

22 24. Plaintiff desires a judicial determination of his rights, obligations, and duties with
23 respect to the Domain Name and a declaration that he possesses all right, title, and interest in and
24 to the Domain Name as against any claim to the Domain Name by Defendant, AFN.

25 25. A judicial determination of Plaintiff's rights as to the Domain Name is necessary
26 and appropriate at this time in order to determine whether Plaintiff can retain the Domain Name,
27 in order to instruct DOMAIN DISCOVER on who owns the Domain Name and/or to instruct
28 DOMAIN DISCOVER to transfer the Domain Name into the registry of the Court, and to avoid
circuitry and multiplicity of actions that will otherwise result from any separate action that must

1 be brought against Defendant, AFN.

2 WHEREFORE, Plaintiff prays for judgment against Defendant, AFN, as follows:

3 1. For a judicial determination and declaration as to Plaintiff's right, title, and
4 interest in and to the Domain Name which is the subject of this action;

5 2. For a judicial determination and declaration that Defendant, AFN, has no right,
6 title or interest to the Domain Name that is the subject of this action, and that Plaintiff is the sole
7 owner of the Domain Name;

8 3. For a judicial determination and declaration that DOMAIN DISCOVER should
9 not transfer the Domain Name to Defendant, AFN, and should instead transfer the Domain Name
10 into the registry of the Court;

11 4. For costs of suit herein; and

12 5. For such other and further relief as the Court may deem just and proper.

13 THE WILLIAMS FIRM

14 Dated: January 4, 2007

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18 D. Alexander Elburn, Esq.
19 Attorneys for Plaintiff, MICHAEL MANN
20 doing business as MM BIZ
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VERIFICATION

1
2 I, MICHAEL MANN, am the sole proprietor of MM BIZ, am the Plaintiff in this action,
3 and make this verification on behalf of myself as an individual, and doing business as MM BIZ.
4 I have read the foregoing Verified Complaint and know its contents. The matters stated in it are
5 true of my own knowledge except as to those matters which are stated on information and belief,
6 and to those matters I believe them to be true.
7

8 I declare under penalty of perjury under the laws of the State of Maryland and under the
9 laws of the State of California that the foregoing is true and correct. Executed this 11th day of
10 January, 2006, at Bethesda, Maryland.
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MICHAEL MANN

ORIGINAL

JS44

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

CIVIL COVER SHEET

FILED

2007 JAN 11 PM 3:48

I (a) PLAINTIFFS MICHAEL MANN doing
business as MM BIZ

DEFENDANTS AFN INVESTMENTS, LTD. US and
unknown entity SOUTHERN DISTRICT OF CALIFORNIA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

BY Bell DEPUTY
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

Bell COUNTY, TX

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
D. Alexander Floum (925) 933-9800
The Williams Firm
1850 Mt. Diablo Blvd., Suite 340
Walnut Creek, CA 94596

ATTORNEYS (IF KNOWN)

'07CV 0083

BEN-GAB FAX

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ U.S. Government Plaintiff ☒ Federal Question
(U.S. Government Not a Party)
- ☐ U.S. Government Defendant ☐ Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- PT. DEF. PT. DEF.
- Citizen of This State ☐ ☐ Incorporated or Principal Place of Business in This State ☐ ☐
- Citizen of Another State ☐ ☐ Incorporated and Principal Place of Business in Another State ☐ ☐
- Citizen or Subject of a Foreign Country ☐ ☐ Foreign Nation ☐ ☐

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

This is a declaratory relief action pursuant to
28 U.S.C. Section 2201 and 15 U.S.C. Section 1114(2)(d)(v)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input checked="" type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 FEA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 BSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input checked="" type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 231 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: Declaratory Relief

DEMAND \$

Check YES only if demanded in complaint:

Costs & Attorneys Fees

DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE

1/11/2007

SIGNATURE OF ATTORNEY OF RECORD

\\ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

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UNITED STATES
DISTRICT COURT
Southern District of California
San Diego Division

135783 -- AS
January 11, 2007

Code	Case #	Qty	Amount
CV083200	3-07-CV-00832		60.00 CR
	Judge - BENETIZ		
LV086400			150.00 CR
LV510000			199.00 CR

Total -> 350.00

FROM: CIVIL FILING
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